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13 BIRDDOG TECHNOLOGY LIMITED
14 BIRDDOG AUSTRALIA PTY LTD

15 UNITED STATES DISTRICT COURT

16 CENTRAL DISTRICT OF CALIFORNIA

17 BIRDDOG TECHNOLOGY
18 LIMITED, an Australian company;
19 and BIRDDOG AUSTRALIA PTY
20 LTD, an Australian company,

21 Plaintiffs,

22 v.

23 2082 TECHNOLOGY, LLC DBA
24 BOLIN TECHNOLOGY, a California
25 limited liability company; HOI
26 “KYLE” LO, an individual; and DOES
27 1 through 25, inclusive,

28 Defendants.

Case No.: 2:23-cv-09416-CAS-AGR

**PLAINTIFFS BIRDDOG
TECHNOLOGY LIMITED’S AND
BIRDDOG AUSTRALIA PTY LTD’S
MEMORANDUM OF POINTS AND
AUTHORITY IN SUPPORT OF ITS
APPLICATIONS FOR RIGHT TO
ATTACH ORDER AND WRIT OF
ATTACHMENT**

[Filed concurrently with (1) Notice of Application and Hearing for Right to Attach Order and Writ of Attachment; (2) Application for Right to Attach Order and Writ of Attachment; (3) Right to Attach Order and Order for Issuance of Writ of Attachment; (4) Writ of Attachment; (5) Declaration of Ryan Q. Keech; (6) Declaration of David Cogan; (7) Declaration of Dan Miall; and (8) Declaration of Barry Calnon]

Complaint Filed: November 7, 2023

Date: January 15, 2024

Time: 1:30 p.m.

Judge: Christina A. Snyder

Courtroom: 8D

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1 **I. INTRODUCTION**

2 This action involves, among other things, Defendants' repudiation of several
 3 contracts and their associated unlawful withholding and expenditure of millions of
 4 dollars in funds paid by Plaintiffs. The contract and related claims - together with
 5 the risk that Defendants will make their assets unavailable absent relief - present the
 6 Court with a straightforward case for pretrial writ relief pursuant to Rule 64 of the
 7 Federal Rules of Civil Procedure.

8 Over the course of several years, Plaintiffs BirdDog Technology Limited and
 9 BirdDog Australia Pty Ltd ("BirdDog" or "Plaintiffs") enjoyed a mutually beneficial
 10 business relationship with their primary camera manufacturer, Southern California-
 11 based Defendant 2082 Technology, LLC dba Bolin Technology ("Bolin") - a
 12 California company controlled by Arcadia resident and Defendant Mr. Hoi "Kyle"
 13 Lo ("Mr. Lo"). That mutually beneficial relationship came to an abrupt end during
 14 the summer of 2023 when Defendants, abruptly, without justification, ***and while***
 15 ***holding the undisputed amount of \$3,060,883.10 in Plaintiffs' funds***, reacted to
 16 their inability to obtain control of Plaintiffs by placing a "hard-sharp stop"
 17 repudiation of their production and delivery of Plaintiffs' cameras pursuant to six
 18 related contracts—all while refusing multiple requests from Plaintiffs to either (1)
 19 reverse the "hard-sharp stop" repudiation and resume production and delivery; or (2)
 20 simply return Plaintiffs' funds.

21 What is worse, part of the reason that Defendants have confirmed their
 22 repudiation while refusing to return Plaintiffs' funds has now been revealed:
 23 Plaintiffs' funds have been and are currently being spent elsewhere on purposes
 24 unrelated to the parties' contractual relationship, including for the development,
 25 manufacture and sale of cameras intended to compete with Plaintiffs. Defendants'
 26 repudiation of their contracts with Plaintiffs has thus resulted in a situation where
 27 Plaintiffs' own money is being utilized to finance and subsidize a nascent competitor.
 28 Combined with Defendants' strong connections to China, a jurisdiction outside of

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1 this Court's reach, the likelihood of dissipation of assets absent immediate relief from
2 this Court is enormous.

3 Through this Application, Plaintiffs seek a right to attach order to safeguard
4 and secure the return of the prepayment funds that Defendants continue to unlawfully
5 withhold. Plaintiffs have satisfied all of the requirements for the requested relief
6 under the California Code of Civil Procedure. Most importantly, Plaintiffs have
7 established the probable validity of the claim upon which this Application is based.
8 The application should be granted.

9 **II. BACKGROUND**

10 **A. The BirdDog-Bolin Business Relationship**

11 Based in Australia, BirdDog is an internationally-renowned distributor of
12 state-of-the-art streaming video technology. (Declaration of Barry Calnon (“Calnon
13 Dec.”) ¶ 2, Ex. A.) BirdDog has established itself as one of the primary global leaders
14 in pan, tilt and zoom (“PTZ”) robotic remotely controlled video cameras. (Calnon
15 Dec., ¶ 2, Ex. A.)

16 Bolin Technology is a Southern California-based manufacturer of video
17 cameras controlled by Mr. Lo, its Chief Executive Officer. (Calnon Dec., ¶ 3.)

18 Starting in 2018 and working initially and primarily through Mr. Lo, Bolin
19 first approached BirdDog executives at industry trade shows and elsewhere,
20 developing detailed knowledge of BirdDog’s operations and making numerous oral
21 and written representations pitching Bolin’s capability to fulfill BirdDog’s camera
22 manufacturing needs. Bolin and Mr. Lo specifically told BirdDog that Bolin was an
23 original equipment manufacturer specialist that had the present intent and capability
24 to manufacture cameras for BirdDog pursuant to BirdDog’s precise specifications.
25 BirdDog agreed to engage Bolin, starting an economic relationship that would
26 eventually result in Bolin becoming BirdDog’s primary supplier of camera
27 technology.

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1 **B. The Six Bolin-BirdDog Agreements for BirdDog Cameras**

2 Initially, Bolin met BirdDog's manufacturing requirements. But beginning in
 3 or about 2022, Mr. Lo and Bolin began to work together to parlay BirdDog's trust
 4 and confidence into a wrongful scheme to *become* BirdDog - inducing BirdDog to
 5 enter into a related series of six transactions that Bolin and Mr. Lo, when BirdDog
 6 rebuffed Bolin's advances, would ultimately repudiate:

7 ***The June 2021 Agreement.*** On June 30, 2021, BirdDog and Bolin finalized
 8 an enforceable oral and written contract whereby Bolin agreed to promptly produce
 9 and timely deliver 400 units of BirdDog's White P400 cameras at price of \$1,699 per
 10 unit in exchange for BirdDog's prepayment of thirty percent (30%) of the total
 11 contract price to be utilized for purposes exclusively related to the timely production
 12 and delivery under the agreement (the "June 2021 Agreement"). (Calnon Dec., ¶ 4,
 13 Ex. B.) As required by the agreement, and in reliance on Bolin's and Mr. Lo's
 14 representations, BirdDog paid Bolin 30% of the total contract price¹ to secure Bolin's
 15 timely production and delivery of these cameras. (Calnon Dec., ¶ 4, Ex. B.)

16 ***The September 2021 Agreement.*** On September 23, 2021, BirdDog and Bolin
 17 finalized an enforceable oral and written contract whereby Bolin agreed to promptly
 18 produce and timely deliver 250 units of BirdDog's A200 second generation cameras
 19 at a price of \$1,724 per unit; 120 units of BirdDog's A300 second generation cameras
 20 at a price of \$2,664 per unit; 1,440 units of BirdDog's Black P120 cameras at a price
 21 of \$687 per unit; 260 units of BirdDog's White P120 cameras at a price of \$687 per
 22 unit; 720 units of BirdDog's Black P110 cameras at a price of \$676 per unit; 270
 23 units of BirdDog's White P110 cameras at a price of \$676 per unit; 1,320 units of
 24 BirdDog's Black P400 cameras at a price of \$1,699 per unit; 780 units of BirdDog's
 25 Black P4K cameras at a price of \$3,695 per unit; 236 units of BirdDog's White P4K
 26 cameras at a price of \$3,695 per unit; 1,400 units of BirdDog's PF120 cameras at a

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¹ This amount was paid across three separate remittance transfers from October 19, 2020 to June
 18, 2021.
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1 price of \$478 per unit; and 2,360 units of BirdDog’s PTZKEY cameras at a price of
2 \$483 per unit in exchange for BirdDog’s prepayment of thirty percent (30%) of the
3 total contract price to be utilized for purposes exclusively related to the timely
4 production and delivery under the agreement (the “September 2021 Agreement”).
5 (Calnon Dec., ¶ 5, Ex. C.) As required by the agreement, and in reliance on Bolin’s
6 and Mr. Lo’s representations, BirdDog paid Bolin 30% of the total contract price² to
7 secure Bolin’s timely production and delivery of these cameras. (Calnon Dec., ¶ 5,
8 Ex. C.)

The August 2022 Agreement. On August 5, 2022, BirdDog and Bolin finalized an enforceable oral and written contract whereby Bolin agreed to promptly produce and timely deliver 3,000 units of BirdDog’s Black P240 cameras at a price of \$1,105 per unit; and 1,000 units of BirdDog’s White P240 cameras at a price of \$1,105 per unit in exchange for BirdDog’s prepayment of thirty percent (30%) of the total contract price to be utilized for purposes exclusively related to the timely production and delivery under the agreement (the “August 2022 Agreement”). (Calnon Dec., ¶ 6, Ex. D.) As required by the agreement, and in reliance on Bolin’s and Mr. Lo’s representations, BirdDog paid Bolin 30% of the total contract price³ to secure Bolin’s timely production and delivery of these cameras. (Calnon Dec., ¶ 6, Ex. D.)

20 ***The October 2022 Agreement.*** On October 21, 2022, BirdDog and Bolin
21 finalized an enforceable oral and written contract whereby Bolin agreed to promptly
22 produce and timely deliver 200 units of BirdDog’s White P120 cameras at a price of
23 \$687 per unit in exchange for BirdDog’s prepayment of thirty percent (30%) of the
24 total contract price to be utilized for purposes exclusively related to the timely
25 production and delivery under the agreement (the “October 2022 Agreement”).

²⁷ This figure was paid across four separate remittance transfers from October 23, 2021 to May 23, 2022.

³ This figure was paid across four separate remittance transfers from October 23, 2021 to May 23, 2022.
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1 (Calnon Dec., ¶ 7, Ex. E.) As required by the agreement, and in reliance on Bolin's
 2 and Mr. Lo's representations, BirdDog paid Bolin 30% of the total contract price⁴ to
 3 secure Bolin's timely production and delivery of these cameras. (Calnon Dec., ¶ 7,
 4 Ex. E.)

5 ***The March 2023 Agreement.*** On March 31, 2023, BirdDog and Bolin
 6 finalized an enforceable oral and written contract whereby Bolin agreed to promptly
 7 produce and timely deliver 750 units of BirdDog's Ocean White U120 cameras at a
 8 price of \$371 per unit; 250 units of BirdDog's White U120 cameras at a price of \$359
 9 per unit; and 1,000 units of BirdDog's Black X120 cameras at a price of \$423 per
 10 unit (the "March 2023 Agreement"). (Calnon Dec., ¶ 8, Ex. F.) As required by the
 11 agreement, and in reliance on Bolin's and Mr. Lo's representations, on March 31,
 12 2023, BirdDog paid Bolin 50% of the total contract price⁵ to secure Bolin's timely
 13 production and delivery of these cameras. (Calnon Dec., ¶ 8, Ex. F.)

14 ***The May 2023 Agreement.*** On May 17, 2023, BirdDog and Bolin finalized
 15 an enforceable oral and written contract whereby Bolin agreed to promptly produce
 16 and timely deliver 1,000 units of BirdDog's Black X120 cameras at a price of \$423
 17 per unit in exchange for BirdDog's prepayment of thirty percent (30%) of the total
 18 contract price to be utilized for purposes exclusively related to the timely production
 19 and delivery under the agreement (the "May 2023 Agreement"). (Calnon Dec., ¶ 9,
 20 Ex. G.) As required by the agreement, and in reliance on Bolin's and Mr. Lo's
 21 representations, on June 2, 2023, BirdDog paid Bolin 30% of the total contract price
 22 - or \$126,900 - to secure Bolin's timely production and delivery of these cameras.
 23 (Calnon Dec., ¶ 9, Ex. G.)

24 **C. Frustrated By Its Inability to Gain Control of BirdDog, Bolin**
Repudiates The Agreements While Holding \$3,060,883.10 in
BirdDog Funds

26 Bolin failed to perform its obligations under these six transactions. Worse, by
 27 the summer of 2023, it would become clear that Mr. Lo and Bolin's true and

28 ⁴ This figure was paid in one remittance transfer on October 21, 2022.

⁵ This figure was paid in one remittance transfer on March 31, 2023.

1 undisclosed intent was to seize control of BirdDog and that they never had any intent
 2 of complying with their obligations under these related transactions - each of which
 3 they would ultimately repudiate.

4 In or about October 2021, BirdDog advised Bolin of its forthcoming listing as
 5 a publicly traded company on the Australian Stock Exchange. (Declaration of Dan
 6 Miall (“Miall Dec.”) ¶ 2) In BirdDog’s eyes, this was a standard notification to
 7 provide to its principal camera supplier: BirdDog had anticipated that Mr. Lo and
 8 Bolin would be pleased with the success of one of their principal customers.
 9 Surprisingly (to BirdDog), this was not the case. Mr. Lo and Bolin were displeased
 10 by this development. Bolin and Mr. Lo objected when BirdDog’s public offering
 11 was finalized in December 2021, argued (without any basis) that they should have
 12 been provided notice more than six months before, and demanded that BirdDog “co-
 13 list” with Bolin. (Miall Dec., ¶ 2.)

14 Consistent with its obligations, BirdDog declined Bolin’s 2021 entreaties,
 15 though still had no reason to think that Bolin had any intent of doing anything
 16 untoward with these transactions or its funds.

17 By the summer of 2023, that all changed: it became increasingly and
 18 disturbingly clear that Bolin had decided to employ more aggressive measures to
 19 obtain total control of BirdDog.

20 Specifically, on July 4, 2023, Mr. Lo demanded an immediate meeting in
 21 Australia with BirdDog executives. That meeting took place in Melbourne, Australia
 22 on July 11, 2023. (Miall Dec., ¶ 3.) During that meeting, Mr. Lo and Bolin
 23 communicated to BirdDog - falsely - that BirdDog was “failing,” “in trouble” and in
 24 “financial distress.” Mr. Lo’s and Bolin’s “solution” to these problems was a **hostile**
 25 **Bolin takeover** - or, put differently, for **Bolin to become BirdDog**. (Calnon Dec., ¶
 26 13.) To formalize this improper demand, Mr. Lo presented “options” to BirdDog
 27 that included (1) a merger; (2) a full takeover by Bolin of BirdDog’s camera business;
 28

1 (3) stopping manufacture of BirdDog's cameras; or (4) vague threats of competition
 2 while manufacturing BirdDog's cameras. (Miall Dec., ¶ 3.)

3 The nature and direction of Mr. Lo's and Bolin's scheme to use BirdDog's
 4 funds and repudiation of Bolin's obligations to squeeze BirdDog into submitting to
 5 Bolin's demands would unfortunately become clearer. On July 15, 2023, Mr. Lo
 6 again met with BirdDog executives in Melbourne. (Miall Dec., ¶ 4.) He reiterated
 7 Bolin's "options" for BirdDog - now, additionally, demanding that he would be CEO
 8 of BirdDog - communicated his dim view of BirdDog's executives (including that he
 9 did not like, value or respect BirdDog's chairman) and refused to consider any
 10 alternatives, including that BirdDog absorb Bolin. (Miall Dec., ¶ 4.) That same day,
 11 Mr. Lo advised BirdDog's chief executive via WeChat that he had 24 hours to agree
 12 to Bolin's demands. (Miall Dec., ¶ 5.) When BirdDog did not immediately accede,
 13 Mr. Lo advised that "all options" were "off the table." (Miall Dec., ¶ 6.)

14 BirdDog and its executives were stunned: not only did Bolin and its executives
 15 have no apparent plan for any of the "options" they presented, but at the moment of
 16 the July 11, 2023 meeting, Bolin had not delivered **9,670** of the cameras that BirdDog
 17 had ordered and for which its customers were waiting and was holding **\$3,060,883.10**
 18 of funds paid pursuant to each of the six transactions.

19 Through August and September 2023, BirdDog tried multiple additional times
 20 to ensure Bolin's compliance with its obligations - asking again for delivery of the
 21 products that it had ordered in accordance with the terms of the six transactions or
 22 for a refund of the outstanding prepayments. (Calnon Dec., ¶ 10.) Bolin refused,
 23 with Mr. Lo admitting that Bolin was repudiating its obligations under these
 24 transactions and that - apparently until BirdDog acceded to Bolin's demands and
 25 permitted him to take over the company - there would be a "hard sharp stop"
 26 repudiation of all BirdDog production. (Calnon Dec., ¶ 10. Ex. H.)

27 **D. The "Hard Sharp Stop" Repudiations Have Not Been Reversed;**
BirdDog's Funds Finance Bolin Competition

1 In October and November 2023, Bolin’s “hard sharp stop” repudiations have
 2 not been reversed. (Calnon Dec., ¶ 11.) Nor has Bolin returned any of the
 3 \$3,060,883.10 in Plaintiffs’ funds - money that Bolin has advised is unavailable to
 4 BirdDog. (Calnon Dec., ¶ 11; Declaration of Ryan Keech (“Keech Dec.”) ¶ 2, Ex.
 5 A.)

6 Bolin’s representations that the money is unavailable to BirdDog and is being
 7 used for purposes other than to secure the timely production and delivery of BirdDog
 8 cameras is especially concerning given the extensive ties of Bolin and Mr. Lo with
 9 China - including control of factories and accounts within mainland China and
 10 outside the jurisdiction of this court. Failing to obtain writ relief raises the possibility
 11 that whatever assets Mr. Lo and Bolin have within the jurisdiction of this Court will
 12 be transferred to China prior to judgment. (Declaration of David Cogan (“Cogan
 13 Dec.”) ¶ 8.)

14 **III. LEGAL STANDARD**

15 In federal court, Plaintiffs are entitled to seize property to secure satisfaction
 16 of a potential judgment in accordance with the procedures of the state where the
 17 district court is located. *Pos-A-Traction, Inc. v. Kelly-Springfield Tire Co.*, 112 F.
 18 Supp. 2d 1178, 1181 (C.D. Cal. 2000); *SMT Corp. v. APT Elecs.*, No.
 19 SACV2300672JVSDFMX, 2023 WL 6373847, at *1 (C.D. Cal. Aug. 17, 2023)
 20 (explaining that “under Federal Rule of Civil Procedure 64, ‘[e]very remedy is
 21 available that, under the law of the state where the court is located, provides for
 22 seizing a person or property to secure satisfaction of the potential judgment.’ Fed. R.
 23 Civ. P. 64(a)’); FED. R. CIV. P. 64(b) (authorizing writ of attachment).

24 California law provides that the Court “shall issue a right to attach order” if:
 25 (1) the claim upon which the attachment is based is one upon which an
 26 attachment may be issued;
 27 (2) the plaintiff has established the probable validity of the claim upon which
 28 the attachment is based;

1 (3) the attachment is not sought for a purpose other than recovery on the claim
2 upon which the request for attachment is based; and
3 (4) the amount to be secured by the attachment is greater than zero.

4 CAL. CIV. PROC. CODE § 484.090.

5 In order to show the probable validity of its claims, a plaintiff need only show
6 that it is “more likely than not” that it will obtain a judgment against the defendants
7 on the claim. *Pos-A-Traction, Inc.*, 112 F. Supp. 2d at 1182. Evidence in support of
8 the writ and demonstrating satisfaction of the procedural requirements may be made
9 by declaration. CAL. CIV. PROC. CODE§ 484.030.

10 **IV. PLAINTIFFS ARE ENTITLED TO A WRIT OF ATTACHMENT**

11 **a. An Attachment May Be Issued If BirdDog Prevails On Their Claims**

12 BirdDog, which seeks to attach Bolin’s and Mr. Lo’s assets in the undisputed
13 amount of money that is unlawfully being withheld by Bolin and Mr. Lo, has satisfied
14 the first element showing its entitlement to an attachment in this action. This case is
15 indisputably “an action on a claim or claims for money, each of which is based upon
16 a contract, express or implied; (2) where the total amount of the claim or claims is a
17 fixed or readily ascertainable amount not less than \$500 exclusive of costs, interest,
18 and attorneys’ fees; and (3) where the claims are unsecured or are secured by personal
19 property, but not by real property.” CAL. CIV. PROC. CODE§ 483.010(a)-(b); *see also*
20 *LA Jewelry Prod., Inc. v. Royal Grp. LLC*, No. CV 23-0488 DSF (KSX), 2023 WL
21 5207490, at *4 (C.D. Cal. July 7, 2023).

22 **BirdDog’s Contract-Based Claims.** BirdDog’s first claim for relief against
23 Bolin is one for breach of contract. Compl., ¶¶ 40-55. “It is a well-recognized rule
24 of law in [California] that an attachment will lie upon a cause of action for damages
25 for a breach of contract where the damages are ascertainable by reference to the
26 contract and the basis of the computation of damages appears to be reasonable and
27 definite.” *CIT Grp./Equip. Fin., Inc. v. Super DVD, Inc.*, 115 Cal. App. 4th 537, 540
28 (2004) (citation omitted). This is satisfied here: BirdDog asserts against Bolin a
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1 claim for breach of contract with an undisputed amount of damages in the amount of
2 the prepayment funds currently, unlawfully being withheld. Compl., ¶¶ 40-55

3 While BirdDog's claims for breach of contract are alone sufficient to show that
4 it its claims for relief support an attachment, its other claims are no less supportive.
5 For instance, BirdDog asserts claims for relief against Bolin and Mr. Lo for
6 conversion (Compl. ¶¶ 60-63); money had and received, as to both Defendants
7 (Compl. ¶¶ 69-72); and violations of California Penal Code Section 496, as to both
8 Defendants (Compl. ¶¶ 64-68). Each supports the attachment that BirdDog seeks.
9 “Under California law, [the] common count[] for money had and received . . . [is an]
10 implied-in-law or quasi-contract claim[] that can support issuance of a writ of
11 attachment.” *ET Publ'g Int'l Inc. v. Pac. Periodicals LLC*, No.
12 CV103108DSFAJWX, 2010 WL 11570434, at *3 (C.D. Cal. Oct. 13, 2010) (citing
13 *Hill v. Superior Court*, 16 Cal. 2d 527, 530-531 (1940)). Further, “implied contract”
14 includes restitutionary obligations—e.g., where defendant acquired plaintiff’s
15 property through fraud, conversion or mistake and refuses to return it (*Klein v.*
16 *Benaron*, 247 Cal. App. 2d 607, 609 (1967)), as well as the obligations imposed by
17 Section 496 of the Penal Code. See CAL. CIV. PROC. CODE§ 483.010(a); *Goldstein v.*
18 *Barak Constr.*, 164 Cal. App. 4th 845, 854 (2008) (claim to recover payments made
19 to unlicensed contractor is “fundamentally contractual in nature”); *Santa Clara*
20 *Waste Water Co. v. Allied World Nat'l Assurance Co.*, 18 Cal. App. 5th 881, 885
21 (2017) (unjust enrichment and rescission claims sufficient for attachment). And all
22 of BirdDog’s claims against Mr. Lo arise out of his conduct of the Bolin business, an
23 activity he conducts “for the purpose of livelihood or profit on a continuing basis.”
24 *Benetton USA Corp.*, No. C 10-03843 JCS, 2010 WL 4973477, at *4. (Calnon Dec.
25 ¶¶ 3, 4-11.)

26 ***The Total Amount Subject To Attachment is More than \$500 and is***
27 ***Unsecured.*** It is also beyond dispute that the amount of BirdDog’s claim -
28 \$3,060,883.10 in prepayment funds - is fixed, readily ascertainable and exceeds
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1 \$500. This figure is fixed and ascertainable because it represents the undisputed
2 amount of money paid by Plaintiffs to Defendants for the delivery of cameras under
3 the agreements that Defendants have now repudiated. (Calnon Dec. ¶¶ 4-11, Exs. B-
4 H.) And it is further beyond dispute that none of BirdDog's claims are secured by
5 real or personal property. (Calnon Dec. ¶12.)

6 Accordingly, BirdDog has satisfied the first requirement of Section 485.220(a)
7 in that its claims are claims upon which an attachment may be issued.

8 **b. BirdDog Has Established The Probable Validity Of Their Claims**

9 For purposes of a writ of attachment, BirdDog need only establish that their
10 "claim[s] ha[ve] 'probable validity' where it is more likely than not that the plaintiff
11 will obtain a judgment against the defendant on that claim." Cal. Civ. Proc. Code. §
12 481.190. They have satisfied that showing here.

13 **i. Breach of Contract**

14 By establishing the terms of the relevant contracts, proving the payments that
15 it has made, and establishing Bolin's repudiation of each of the relevant contracts,
16 BirdDog has, *first*, established the probable validity of its claim for breach of contract
17 against Bolin. *See Richman v. Hartley*, 224 Cal. App. 4th 1182, 1186 (2014) (setting
18 forth elements of breach of contract under California law). BirdDog has established
19 that it and Bolin entered into each of the six agreements (Calnon Dec. ¶¶ 4-11, Exs.
20 B-H.); that BirdDog fully performed all relevant obligations under the Agreements
21 by paying to Bolin the specified amount under the Agreements (Calnon Dec. ¶¶ 4-
22 11, Exs. B-H.); that Bolin materially breached the Agreements by, *inter alia*, failing
23 to timely produce and deliver the equipment, failing to meet promised delivery dates,
24 causing unnecessary and unreasonable delay in producing and delivering units, and
25 failing to provide units of acceptable and/or merchantable quality (Calnon Dec., ¶ 10,
26 Ex. H); that BirdDog suffered damages in an amount exceeding \$3,060,883.10
27 because they paid that amount to Bolin in prepayment funds but Bolin has since
28 refused to provide the agreed upon equipment or refund the prepayment funds

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1 (Calnon Dec., ¶ 11; Keech Dec. ¶ 2, Ex. A.); and that Bolin's breach was a substantial
2 factor in causing Plaintiffs' harm. This satisfies the first factor of the analysis.

3 **ii. Other Claims**

4 BirdDog has also, **second**, established the probable validity of its other claims
5 in this action. As to conversion (*Regent Alliance Ltd. v. Rabizadeh*, 231 Cal.App.4th
6 1177, 1181 (2014) (setting forth elements of conversion claim)) and money had and
7 received (*Title Ins. Co. v. State Bd. of Equalization*, 4 Cal. 4th 715, 731(1992)
8 (elements of claim for money had and received)), BirdDog has shown that after the
9 repudiation of these agreements, Defendants have unlawfully withheld funds that it
10 was paid over by BirdDog for its (Defendants) use and benefit. (Calnon Dec., ¶¶ 10-
11, Ex. H; Keech Dec. ¶ 2, Ex. A.) "Unjustified refusal to turn over possession on
12 demand constitutes conversion [,]" which is exactly what Bolin and Mr. Lo have
13 done here. *Cerra v. Blackstone*, 172 Cal.App.3d 604, 609 (1985). Equally valid is
14 BirdDog's resulting claim for money had and received: a paradigmatic example of
15 such a claim is where, as there, there has been a "total failure of consideration or
16 repudiation." *Brown v. Grimes*, 192 Cal. App. 4th 265, 28 (2011). And because
17 Bolin's conduct also constitutes theft of BirdDog's property - the prepayment funds
18 - BirdDog has also shown the validity of this claim. *See Switzer v. Wood*, 35 Cal.
19 App. 5th 116, 126 (2019) (violation of Section 496 when a party, *inter alia*, steals,
20 takes, carries, leads, drives away or feloniously appropriates property which has been
21 entrusted to him or her). This, too, shows that BirdDog has established the probable
22 validity of its claims.

23 **c. The Attachment Is Not Sought For A Purpose Other Than Recovery
24 On The Claim Upon Which BirdDog's Request For Attachment Is
25 Based**

26 BirdDog's request for attachment is not made for an improper purpose.
27 BirdDog seeks the attachment to secure its probable recovery on their contract-based
28 claims, including, their breach of contract claim against Bolin and their conversion,
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1 money had and received, and California Penal Code Section 496 claims against both
2 Defendants. BirdDog has legitimate concerns about Bolin dissipating assets during
3 the pendency of this action, including by transferring assets to jurisdictions outside
4 the reach of this Court and by spending BirdDog's money for purposes other than the
5 fulfill their obligations under the contracts. BirdDog's request for attachment is
6 intended to prevent those things from happening.

d. The Amount To Be Secured By The Attachment Is Greater Than Zero

9 The amount to be secured by Plaintiffs' writ of attachment is \$3,060,883.10,
10 which is greater than zero. (Calnon Dec. ¶ 11.) Accordingly, Plaintiffs have satisfied
11 the fourth and final requirement of Section 485.220(a).

V. CONCLUSION

13 For the foregoing reasons, BirdDog respectfully requests that the motion be
14 granted in its entirety and that attachments issue in accordance with the terms
15 requested therein.

K&L GATES LLP

18 || Dated: December 15, 2023

By: /s/ Ryan Q. Keech
Ryan Q. Keech
Gabriel M. Huey
Kevin G. Sullivan

Attorneys for Plaintiffs